IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 119 of 2006

FAKIRCHAND & ORS
V/S
LR'S OF RATANLAL

Mr. MOHD. ASLAM with Mr.MANISH SHISHODIA, for the appellant / petitioner

Date of Order : 6.12.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

Learned trial court has found that the property in question had been mortgaged for sum of Rs.2500/- and was taken back on rent, which rent defendant No.3 Mangilal could not pay, and therefore the suit has been filed, which was decreed and in execution the property has been attached. Likewise the defendant No.3 had also borrowed Rs.3,000/- from Mangilal Sehalot, and for recovery of that amount also suit has been filed and decreed, in the execution of that decree also property in question was attached, and it was in these circumstances, that the property was sold, and the purchaser has come in the witness box, and has proved to have himself paid the amount to aforesaid decree-holders, and also to have got redeemed the house by repaying the mortgage money. The

property is said to have been sold for Rs.7,500/-. Thus it is clear that the property was sold for legal necessity of the family. This finding has been affirmed by the learned lower appellate court.

It was sought to be argued that it is not established on record, that the loan which is said to have been taken by Mangilal, or by mortgaging the property, was taken for family necessity, or moral purpose, and therefore even if the sale proceeds are said to have been used for repayment of those loans, still it cannot be said that the property was sold for legal necessity.

In my view a look at the statement of the plaintiff shows, that she has not deposed about those loan being not for family necessity, or having been incurred for immoral purposes. Only vague and passing statement has been given, to the effect that the defendant No.3 did not perform any big social function or discharge big social family responsibility, like marriage or performance of last rites, and merely from this she has concluded, that the sale was not for family necessity. In my view in absence of any evidence in that regard, it cannot be assumed, that the earlier loans were not for family necessity. That apart so far the question required to be gone into is, as to whether the property was sold for family necessity, and as has rightly been found by the learned court below, that

the property was already mortgaged, apart from the fact that it was already under attachment in the execution of two decrees, and amount of sale proceed has been substantially used for satisfying the decrees, and for redeeming the mortgage.

In view of the above I do not find any error in the findings of the learned Courts below. Thus, the appeal does not involve any substantial question of law, and the same is, therefore, dismissed summarily.

(N P GUPTA),J.

/RM/